FRONT Report LINE

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LEGISLATIVE PROPOSALS

Several legislative bills have been proposed, including those from the AG's Office to combat the proliferation of meth and to prevent juvenile crime.

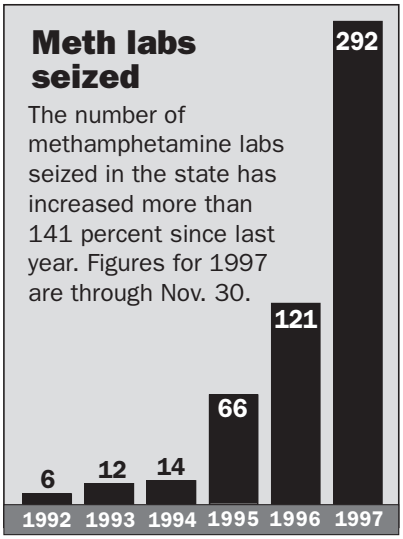
AGO targets meth labs

TWO LEGISLATIVE proposals from the AG's Office address the proliferation of meth.

Missouri already leads the nation in meth arrests and officials expect the number of labs seized this year to triple 1996 seizures.

Legal assists: The AG's Office is proposing legislation to provide direct legal assistance to regional drug task forces in Missouri. Federal prosecutors provide legal counsel to a few of the 24 task forces, but most need additional legal support.

Attorney General **Jay Nixon** said the AG's unit would work cooperatively with local prosecutors and law enforcement on multi-jurisdictional prosecutions, such as cases that cross county lines. It also would provide assistance to prosecutors on request.



Source: Missouri Highway Patrol

Tougher laws: Nixon also is working with law officers and prosecutors on a joint proposal to increase the penalty for meth possession and to reduce the quantity qualifying as a felony. He wants to expand the list of over-the-counter products used in meth that must be registered when sold in bulk.

A bill also would provide more funding to the Department of Natural Resources to help clean up dismantled meth labs.

AG's Office joins national task force

THE AG'S OFFICE is participating in a task force created in 1996 by the Comprehensive Methamphetamine Control Act.

Missouri is one of the few states that has more than one member on the task force. The first meeting was held in December in Washington, D.C. Other meetings are scheduled.

Prosecutors or officers who have suggestions or solutions to fight meth may contact task force member **Andrea Spillars** in the AG's Criminal Division at 573-751-3321.

Legislative proposals geared for troubled youth

AG JAY NIXON is calling for new laws to support programs for troubled youth, including alternative schools, fast-track drug courts and gun-free school zones.

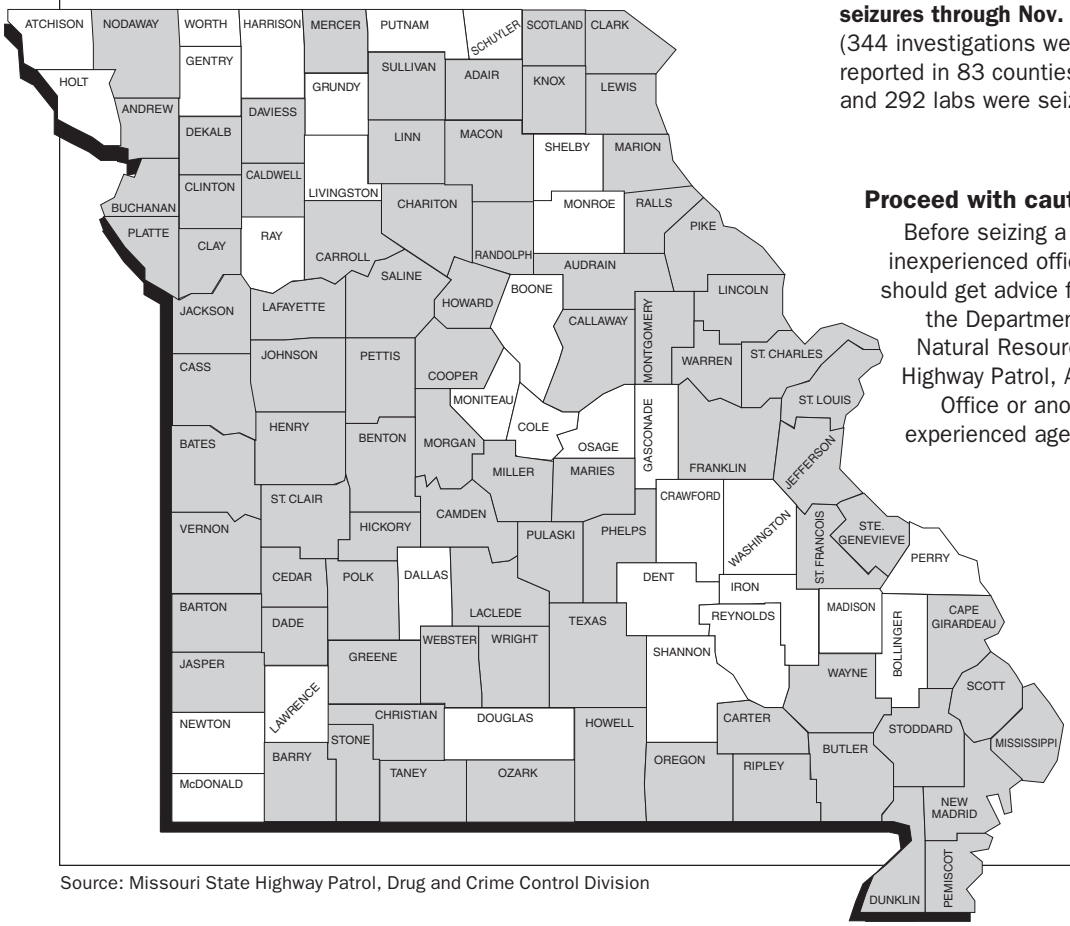
"We have closed loopholes in the laws and reformed the juvenile code," Nixon said. "Now it is time to target troubled juveniles and keep them from a life of crime."

Support for alternative schools: Many of the more than 50 alternative schools in Missouri are partially funded by a three-year grant from the Safe Schools Act. Nixon is requesting that the funding be extended beyond three years. The schools work with disruptive and troubled students.

Fast-track drug courts: The drug courts give top priority to drug-related cases, quickly putting drug dealers on trial and off the streets. The courts also place first-time offenders in a treatment program and then on to prison if they don't successfully complete it.

Gun-free school zones: Guns will not be permitted within 1,000 feet of schools. Law enforcement officials and law-abiding residents living in the zones will be exempt.

Meth labs investigated in 1997



Counties with meth lab investigations or seizures through Nov. 30 (344 investigations were reported in 83 counties and 292 labs were seized)

Proceed with caution

Before seizing a lab, inexperienced officers should get advice from the Department of Natural Resources, Highway Patrol, AG's Office or another experienced agency.

Source: Missouri State Highway Patrol, Drug and Crime Control Division

Criminal defense lawyers can get fees

A NEW FEDERAL law signed Nov. 22 allows criminal defendants to recover attorney fees from the federal government if they are found not guilty and can prove the Feds had no legitimate basis for bringing the charges.

Previously, individuals usually had to pay their attorney fees, regardless of case outcome. This also applied to criminal cases.

Although limited to extraordinary circumstances, HR 2267 may have a chilling effect on the willingness of federal prosecutors to aggressively pursue difficult cases.

The fee provisions **do not** apply to state criminal prosecutions.

Officer's intent questioned in inventory search

A recent federal appeals court ruling overlooks a 1996 U.S. Supreme Court decision that held that — regardless of a police officer's subjective intent — the legality of an arrest or stop will be judged on objective facts. The ruling, *Whren v. United States, 116 S.Ct. 1789,* limited the ability of criminal defendants to argue that an arrest was "pretextual."

In *U.S. v. Castro,* however, the appeals court ruled that the subjective intent of an officer is still relevant when it held that an inventory search uncovering drugs was illegal.

The Fifth Circuit ruled that "an inventory search is reasonable and lawful only if conducted for purposes of an inventory and not as an investigatory tool to produce or discover incriminating evidence."

Federal officers were conducting surveillance on major drug traffickers including the defendant. The officers had no lawful basis, however, to stop the defendant to question him, even after following him through three Texas counties.

The officers asked a local deputy to find a reason to stop the defendant. The deputy stopped the defendant for speeding and arrested him for a seat belt violation. The car was taken to the station for an inventory where a drug dog alerted officers to the trunk, which contained 900 pounds of cocaine.

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UPDATE: CASE LAW

SUPREME COURT

State v. Clarence R. Dexter
No. 74398
Mo.banc, Oct. 21, 1997

The court reversed the defendant's conviction of first-degree murder because the prosecutor improperly commented on the defendant's silence following arrest and Miranda warnings. Throughout the trial, the prosecutor emphasized that the defendant talked to police but questioning ceased when he requested an attorney.

The state inferred guilt by showing that the defendant refused to be questioned further and asked for an attorney when faced with the direct accusation.

State v. Stanley Hall
No. 79106
Mo.banc, Oct. 21, 1997

The trial court did not err in denying a motion to enforce a plea agreement in which the defendant allegedly pleaded guilty to first-degree murder and received a life sentence.

There is no absolute right to have a guilty plea accepted by the trial court, even when both parties have presented a written agreement to the court.

If the state obtains a confession through promises of leniency and reneges, however, the confession cannot be used at trial.

The defendant had argued that he confessed to police relying on the plea agreement and took a lie detector test. Even if there had been a plea agreement and the state breached it after obtaining the confession, the defendant's only relief would have been to exclude the confession.

This confession was similar to a statement the defendant gave police after the crime.

Since it was not detrimental to the defendant to repeat an earlier confession and the state did not unjustly benefit by the jury hearing the confession a second time, the records supported the trial court's ruling.

EASTERN DISTRICT

State v. Stephen Lancaster
No. 69991
Mo.App., E.D., Oct. 14, 1997

The court reversed the defendant's rape convictions because the state improperly admitted evidence of other crimes. Because the defendant admitted he had sex with the woman, evidence of other crimes to prove intent was irrelevant and inadmissible.

The defendant's abuse of other victims was inadmissible to show the defendant acted with the requisite criminal intent based on the victim's lack of consent. Also, the evidence of nonconsent did not rebut the consent issue concerning this victim. The court therefore believed the evidence was admitted to prove the defendant's propensity to commit the crime.

State v. Dennis Stout
No. 71206
Mo.App., E.D., Nov. 4, 1997

The court affirmed the defendant's conviction of felonious animal abuse under Section 578.012.2(2). Under that statute, the term "mutilation" encompasses any severe injury that results in the cutting off or removal of any central part of an animal or thing that impairs its completeness, beauty or function.

State v. Dennis Laramore
No. 70852
Mo.App., E.D., Nov. 18, 1997

The court reversed the defendant's conviction of second-degree burglary and stealing and ordered the defendant to be discharged. The state did not bring the defendant to trial within 180 days as required by the Uniform Mandatory Disposition of Detainer Law.

The judge certified this case to the Missouri Supreme Court because of a conflict within the courts of appeal regarding whether the detainer law applies to intrastate cases and expressly requires a detainer to be filed as similarly required by the agreement of detainer.

State v. Robert Clampitt
No. 71769
Mo.App., E.D., Nov. 18, 1997

The court reversed and remanded the case because the court should have disqualified the assistant prosecutor who had represented the defendant in earlier proceedings in the same case.

The assistant prosecutor confirmed she had represented the defendant while working in the public defender's office, but said she had never talked with the defendant. The earlier representation created an apparent conflict of interest and appearance of impropriety.

State v. Irvin Gardner
No. 69425
Mo.App., E.D., Nov. 18, 1997

The trial court did not abuse its discretion in allowing a police officer to opine that the defendant was pictured on a surveillance tape.

The ID helped the jury because the tape quality was poor and the defendant's face was partially obscured. The officer's credible testimony — he had known the defendant for 10 years — outweighed the danger of prejudice. The identification supplemented another officer's identification and images on the video.

Also, the trial court did not abuse its discretion in refusing to allow the defendant's mother to testify to rebut the state's case: The defendant did not disclose this witness before trial.

UPDATE: CASE LAW

State v. Johnnie Lee Johnson
No. 70787
Mo.App., E.D., Oct. 7, 1997

There was sufficient evidence of the defendant's guilt of DWI. Evidence showed that the defendant notified police at about 9:55 p.m. that a truck allegedly forced him off the road. When police arrived at 10:06 p.m., the appellant was staggering, his speech was slurred and he reeked of alcohol. He failed several sobriety tests. The officer testified he believed the accident was reported "as soon as it happened."

The defendant argued the state failed to prove when the "accident" occurred and failed to prove the defendant **did not** drink alcohol while the officer was en route to the scene. Thus, he argued the state failed to establish he was intoxicated while driving.

The court ruled the evidence supported an inference that the defendant was intoxicated when he drove off the highway because the accident was promptly reported and when the officer quickly responded he found the defendant intoxicated.

SOUTHERN DISTRICT

State v. Thomas Lauer
No. 21470
Mo.App., S.D., Nov. 6, 1997

The court affirmed the defendant's convictions of first-degree assault and felony child abuse.

Evidence showed that the defendant knowingly attempted to seriously injure his girlfriend when he beat her with his fist for 10 to 15 minutes. While the length of the beating was unclear, the finder could have reasonably inferred the defendant knowingly beat her.

Based on evidence, it was probable that the blows to the victim's head were reasonable and probable consequences of his blows, causing her to fall and suffer a gashed leg that required stitches. While the gash may not have been serious, the fact that the defendant intended to cause the wound strengthened the inference that he tried to seriously injure her.

There was also sufficient evidence of child abuse. The defendant contended that "hand spanking" was not cruel and unusual punishment because it is an acceptable discipline.

The trial court found that the defendant beat a 2-year-old's face and body. Bruises were found on the child's buttocks, interior and posterior thighs and lower back. The trial court could reasonably have found that the bruises were caused by the defendant's hand.

The court said it would defy the conscience to find that this beating did not constitute cruel and inhuman punishment.

State v. George Stanley Revelle
No. 20879
Mo.App., S.D., Nov. 12, 1997

The court reversed the defendant's first-degree murder conviction because the court improperly admitted into evidence a hearsay note authored by the victim and directed to the defendant. The victim, the defendant's wife, expressed dissatisfaction with their marriage in the note.

The court rejected the state's argument that the note was admissible as a "present state of mind." This exception cannot be used to allow hearsay testimony offered primarily to prove an **accused's** state of mind. The rule only applies when the hearsay shows primarily the declarant's state of mind to prove an ultimate issue.

This exception is usually applied in homicide cases when an accused claims self-defense, suicide or accidental death.

The defendant, denying he killed her, testified he thought the man who killed his wife did so accidentally.

The court also rejected the state's argument that the note was relevant to refute the defense's suggestion that the couple's relationship had been amicable and the defendant did not kill her. The court rejected the argument because the **state** first injected the issue of whether the relationship was amicable.

The court rejected the argument that the note was relevant to establish the defendant's motive to kill.

Numerous concurring and dissenting opinions were filed.

State v. William C. Glaese
No. 21251
Mo.App., S.D., Nov. 13, 1997

The court reversed the defendant's sodomy conviction because the state obtained a deposition of an out-of-state witness and presented that evidence as testimony. The defendant did not attend the out-of-state deposition and there was no attempt to secure the defendant's confrontation rights.

The state sent a notice to take the deposition and then took it without requesting a hearing before the trial court to consider whether the defendant's confrontation and cross-examination rights would be protected.

There also was no hearing conducted by the circuit court regarding reasonable out-of-state travel expenses of the defendant and his counsel.

It was not until after the deposition was taken that the state secured to subpoena the witness under the Uniform Law to secure attendance of out-of-state witnesses.

Because the state intended to use the deposition against the defendant, the state and trial court should have done more than notify the defendant's counsel of the time and place of the deposition. The deposition testimony was prejudicial to the defendant which mandated a reversal.

UPDATE: CASE LAW

State v. Scott Elliott Hope
No. 19850
Mo.App., S.D., Sept. 24, 1997

The trial court did not err in denying the defendant's motion to suppress statements based on police officers' silence regarding the nature of the crime for which he was arrested. The defendant argued that once he realized he was being questioned about a robbery-homicide, he requested counsel.

An individual's knowledge of the crime for which he is arrested has no bearing on whether the individual understands his Miranda rights. The Miranda warning ensures that a defendant understands he "may choose not to talk to law enforcement officers, to talk only with counsel present, or to cease talking anytime."

Also, the fact that the defendant did not know he was being videotaped had no bearing on the voluntariness of his Miranda waiver.

State v. Barry Condict
No. 21698
Mo.App., S.D., Sept. 26, 1997

The court reversed and remanded this case, finding insufficient evidence to convict the defendant of attempting to manufacture methamphetamine.

The defendant was charged with the felony, which requires that the "defendant possessed chemicals and drug paraphernalia used in the manufacture of methamphetamine, and such conduct was a substantial step toward the commission of the crime ..."

The defendant argued that state evidence failed to show he was in actual or constructive possession of chemicals or paraphernalia used to make meth.

Police arrested the defendant and others in a garage the defendant was visiting. Police found jars and meth lab equipment including ether and chemical mixtures in a nearby closet in the garage. Doors to an adjoining office and closet were open when police entered and no lights were on.

No identifying marks were found on a bag containing the lab equipment although the owner of the garage and his workers denied knowing about it.

The court found there was insufficient evidence that the defendant possessed the equipment because the state failed to establish that the defendant had regular access to the building. Evidence only proved the defendant was present when the contraband was found.

WESTERN DISTRICT

State v. Kenneth G. Boyd
No. 53369
Mo.App., W.D., Oct. 14, 1997

The court did not commit plain error in allowing the state to cross-examine a co-defendant about his guilty plea in a related case in which he received a suspended sentence.

The state clearly was anticipating the defendant's cross-examination impeaching the co-defendant's testimony against the defendant by trying to show it was based on receiving a favorable disposition from the state on related criminal charges.

The hunch proved true. The defendant's trial counsel devoted considerable time on cross-examination and in closing arguments on this issue.

While it is reversible error to allow the state to introduce into evidence or disclose to the jury the disposition of another co-defendant's charged offense arising out of the same transaction, the state can use this evidence to pre-emptively rehabilitate a testifying co-defendant expected to face impeachment attempts on the basis that his testimony was influenced by the disposition.

State v. Zachary A. Smith
No. 52816
Mo.App., W.D., Oct. 21, 1997

The court reversed the defendant's conviction of first-degree murder because the trial court failed to submit a second-degree murder instruction as set out in *State v. Santillan*, 948 S.W.2d 574 (Mo.banc, 1997).

The jury reasonably could have drawn different inferences of whether the defendant deliberated. The court noted that "Santillan makes clear that it is a rare murder case where a second degree murder instruction will not be required if requested."

The court also found that a warrantless search of a safe in a residence was unconstitutional. While the defendant's friend had authority to allow a search of the residence where she was temporarily living, that consent did not extend to a safe found in a closet. There was no evidence that the friend even purported to consent to the search or had any proprietary interest or control of the sealed safe.

State v. Carl Franklin Olney
No. 53418
Mo.App., W.D., Nov. 4, 1997

The court remanded the case for resentencing when the trial court sentenced the defendant to consecutive sentences, allegedly under the mistaken belief that the armed criminal action sentence was required to be served consecutively to the underlying sentence of first-degree assault.

While the issue was not preserved for appellate review, the court rejected the state's argument that the defendant was not prejudiced because the trial court intended to impose consecutive sentences even if not mandated by Section 571.015.1.

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UPDATE: CASE LAW

State v. Michelle Houcks
No. 52467
Mo.App., W.D., Oct. 28, 1997

The court affirmed the defendant's conviction of first-degree assault for setting her estranged husband on fire. The court did not err in refusing to submit a self-defense instruction to the jury when the defendant received an accident instruction.

Missouri courts do not recognize the anomalous doctrine of accidental self-defense. While a defendant may be entitled to have both submitted to the jury if proved by proper evidence, evidence to justify instructions on the inconsistent defenses must be offered by the state or proved by third-party witnesses for the defendant.

The defendant cannot provide the basis for inconsistent defenses. During trial, the defendant never admitted to intentionally setting fire to her husband and consistently asserted the fire was accidental, resulting from an argument that became physical.

State v. Ray E. Kelly
No. 52869
Mo.App., W.D., Nov. 4, 1997

The trial court abused its discretion in overruling the defendant's motion to sever one count of first-degree robbery and one count of armed criminal action from the remaining six counts of robbery. Tactics used in the commission of the first robbery were not similar to those used in the later three crimes.

Elizabeth Ziegler, executive director of the Missouri Office of Prosecution Services, prepares the Case Law summaries for Front Line.

Wanted: *Felons' mugs*

THE AG's OFFICE is still accepting mugshots of law enforcement agencies' most wanted felons, which will be placed on the AGO's web site and statewide on cable TV.

Law enforcement officials in Missouri are encouraged to send fugitives' mugs and descriptions to: Front Line, Attorney General's Office, PO Box 899, Jefferson City, MO 65102.

The AGO's homepage is: **www.state.mo.us/ago/homepg.htm**